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PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 28th February, 1947.

L. A. BILL No. 27 OF 1947

A Bill to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April 1947.

WHEREAS it is expedient to discontinue the duty on salt manufactured in, or imported into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, VI of 1898, to continue, subject to certain modifications, for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to continue XII of 1942, the temporary export duty on raw cotton and the enhanced rates of export duties on raw jute and jute manufactures, to enhance the export duty on tea, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Finance Act, Short title and extent.
1947.

(2) It extends to the whole of British India.

2. For the year beginning on the 1st day of April 1947, no Discontinuance duty shall be levied on salt manufactured in, or imported by of salt duty.
sea or by land into, British India.

*The Governor General has been pleased to give the previous sanction required by sub-section (2) of section 67 of the Government of India Act, as saved from repeal by paragraph 2 of the Government of India (Commencement and Transitory Provisions) Order, 1938, and the previous sanctions required by clause (b) of sub-section (1) of section 108, and sub-section (1) of section 141, of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

Inland postage rates.

VI of 1898.

Continuation of additional duties of customs imposed by section 6, Act XII of 1942. XXXII of 1934.

VII of 1946.

Provision regarding certain temporary duties of customs and enhanced rates of duties of customs. XXXI of 1934.

3. For the year beginning on the 1st day of April 1947, the Schedule contained in the First Schedule to the Indian Finance Act, 1945, shall again be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act.

4. The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March 1943 by section 6 of the Indian Finance Act, 1942, and continued, subject to certain modifications, up to the 31st day of March 1947, by section 5 of the Indian Finance Act, 1946, shall continue to be levied and collected, as provided in the said section 6 and subject to the aforesaid modifications, up to the 31st day of March 1948.

5. (1) For the Second Schedule to the Indian Tariff Act, 1934, the following shall be substituted, namely :—

“THE SECOND SCHEDULE

Export Tariff

Item No.	Name of article	Rate of duty
1	RAW JUTE (other than Bimlipatam jute)—	
	(1) Cuttings	Rs. 4-8 per bale of 400 lbs.
	(2) All other descriptions	Rs. 15 per bale of 400 lbs.
2	JUTE MANUFACTURES (other than of Bimlipatam jute), when not in actual use as coverings, receptacles or bindings for other goods—	
	(1) Sacking (cloth, bags, twist, yarn, rope and twine)	Rs. 50 per ton.
	(2) Hessians and all other descriptions of jute manufactures not otherwise specified	Rs. 80 per ton.
3	RAW COTTON	At such rate not exceeding Rs. 75 per bale of 400 lbs. as the Central Government by notification in the official Gazette may from time to time determine.
4	RICE, with or without husk, including rice flour, but excluding rice bran and rice dust, which are free	Two annas and three pies per standard maund.
	TEA	Four annas per lb.”

(2) The following Ordinances are hereby repealed, namely:—

(a) The Indian Tariff Act (Amendment) Ordinance, 1946; **XXVI of 1946.**

(b) The Indian Tariff Act (Second Amendment) Ordinance, 1946; **XXVII of 1946.**

(c) The Indian Tariff (Amendment) Ordinance, 1947. **II of 1947.**

6. (1) Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginning on the 1st day of April 1947— **Income-tax and super-tax.**

(a) income-tax shall be charged at the rates specified in Part I of the Schedule, and

(b) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Schedule. **XI of 1922**

(2) In making any assessment for the year ending on the 31st day of March 1948, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Indian Income-tax Act, 1922, an amount equal to one-fifth of the earned income, if any, included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March 1948,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on securities", or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusions bears to his total income; **VII of 1946.**

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March 1948, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

- (i) on that part of the earned income chargeable under the head "Salaries" to which clause (b) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that sub-section, *plus*
- (ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, *plus*
- (iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) In making any assessment for the year ending on the 31st day of March 1948,—

- (a) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of two annas in the rupee on that part of its total income which consists of such inclusion ;
- (b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

XII of 1942.

(6) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3), (4) and (5) of this section.

(7) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April 1947, under sub-section (2) or sub-section (2B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees.

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act 1922, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act.

7. To sub-section (2) of section 10 of the Indian Finance Act, 1942, the following proviso shall be added, namely:— Amendment of
section 10, Act
XII of 1942.

"Provided that if it is subsequently found that the sum so repaid was excessive, the excess repayment shall be recoverable, and the provisions of law referred to in sub-section (4) of section 2 of the Excess Profits Tax Ordinance, 1943, shall apply to the payment and recovery of the amount of the excess repayment as if that amount were a deposit required to be made under that section, but notwithstanding the provisions of sub-section (7) of section 46 of the Indian Income-tax Act, 1922, as applied by the said sub-section (1), such recovery may be made at any time." XVI of 1943.
XI of 1922

THE SCHEDULE

(See section 6)

PART I

Rates of Income-tax

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

Rate

- | | |
|---|--------------------------------------|
| 1. On the first Rs. 1,500 of total income . . . | Nil. |
| 2. On the next Rs. 3,500 of total income . . . | One anna in the rupee. |
| 3. On the next Rs. 5,000 of total income . . . | Two annas in the rupee |
| 4. On the next Rs. 5,000 of total income . . . | Three and a half annas in the rupee. |
| 5. On the balance of total income | Five annas in the rupee |

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,500 ;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,500 ;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,500 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified,—

whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	Five annas in the rupee.

PART II

Rates of Super-tax

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this Part applies—

	Rate, if income wholly earned.	Rate, if income wholly unearned.
1. On the first Rs. 25,000 of total income	Nil.	Nil.
2. On the next Rs. 5,000 of total income.	Two annas in the rupee.	Three annas in the rupee.
3. On the next Rs. 5,000 of total income.	Two and a half annas in the rupee.	Three and a half annas in the rupee.
4. On the next Rs. 10,000 of total income.	Three annas in the rupee.	Four annas in the rupee.
5. On the next Rs. 10,000 of total income.	Four annas in the rupee.	Five annas in the rupee.
6. On the next Rs. 10,000 of total income.	Five annas in the rupee.	Six annas in the rupee.
7. On the next Rs. 10,000 of total income.	Six annas in the rupee.	Seven annas in the rupee.
8. On the next Rs. 15,000 of total income.	Seven annas in the rupee.	Eight annas in the rupee.
9. On the next Rs. 15,000 of total income.	Eight annas in the rupee.	Nine annas in the rupee.
10. On the next Rs. 15,000 of total income.	Nine annas in the rupee.	Ten annas in the rupee.
11. On the next Rs. 30,000 of total income.	Ten annas in the rupee.	Ten and a half annas in the rupee.
12. On the balance of total income.	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

[B.—In the case of every local authority—

Rate

On the whole of total income Two annas in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under II of 1912, an Act of a Provincial Legislature governing the registration of co-operative societies—

Rate

(1) On the first Rs. 25,000 of total income Nil.

(2) On the balance of total income Two annas in the rupee.

D.—In the case of every company—

Rate

[On the whole of total income Two annas in the rupee.

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March 1948, on the amount by which such part—

Rate

(a) exceeds 30 per cent., but does not exceed 40 per cent., of the total income as so reduced Three annas in the rupee.

(b) exceeds 40 per cent., but does not exceed 50 per cent., of the total income as so reduced Five annas in the rupee.

(c) exceeds 50 per cent. of the total income as so reduced Seven annas in the rupee ;

Provided that—

(i) no additional super-tax shall be payable where such part is less than, or equal to, five per cent. on the capital of the company ;

(ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company ;

(iii) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

XI of 1922.

Explanation.—For the purposes of this paragraph,—

(a) the expression “capital of the company” shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March 1948 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943 :

XII of 1942.

XVI of 1943.

(b) the expression “dividend” shall be deemed to include any distribution included in that expression as defined in clause (6A) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March 1948 shall be deemed to have been made in respect of the whole or part of the previous year :

(c) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

Declaration under the Provisional Collection of Taxes Act, 1931

It is hereby declared that it is expedient in the public interest that the provisions of sub-clauses (1) and (2) of clause 5 of this Bill, so far as they relate to tea, shall have immediate effect under the Provisional Collection of Taxes Act, 1931.

XVI of 1931

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to discontinue the salt duty ; to continue the existing rates of inland postage ; to continue the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, as modified by section 5 of the Indian Finance Act, 1946 ; to continue the temporary duties of customs and enhanced rates of duties of customs imposed on raw jute, jute manufactures and raw cotton by the Indian Tariff Act (Amendment) Ordinances XXVI and XXVII of 1946 ; to levy an enhanced duty of customs on the export of tea ; to fix rates of income-tax and super-tax and to make certain provisions relating to income-tax, super-tax and excess profits tax.

NEW DELHI ;

The 27th February 1947.

LIAQUAT ALI KHAN.

NOTES ON CLAUSES

Clause 2 provides that no duty shall be levied on salt manufactured in, or imported into, British India during the year beginning on the 1st April 1947.

Clause 3 provides for the continuance for a further period of one year of the present inland rates of postage.

Clause 4 provides for the continuance for another year of the additional customs duties imposed by section 6 of Act XII of 1942, subject to certain modifications made by section 5 of Act VII of 1946.

Clause 5 provides for the continuance of the temporary duties of customs and enhanced rates of duties of customs imposed by the Indian Tariff Act (Amendment) Ordinances XXVI and XXVII of 1946 on raw jute, jute manufactures and raw cotton exported from India and for the levy of an enhanced export duty on tea.

Clause 6 read with the Schedule provides for the imposition of income-tax and super-tax at certain rates for one year.

Clause 7 provides for the recovery of any excess refund of excess profits tax deposits.

The following Bill* was introduced in the Legislative Assembly on the 28th February, 1947

L. A. BILL No. 28 OF 1947

A Bill further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing ;

XI of 1922.
XV of 1940.

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. (1) This Act may be called the Income-tax and Excess Profits Tax (Amendment) Act, 1947. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

*The Governor General has been pleased to give the previous sanction required by sub-section (1) of section 67 of the Government of India Act, as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitory Provisions) Order 1936, to the introduction in the Legislative Assembly of this Bill.

CHAPTER II'

Amendments of Act XI of 1922

Amendment
of section 2,
Act XI of
1922.

2. In section 2 of the Indian Income-tax Act, 1922 (hereafter in this Chapter referred to as the said Act),—

(a) clause (4A) shall be renumbered as clause (4B), and after clause (4) the following clause shall be inserted, namely :—

“(4A) “capital asset” means any property (other than agricultural land) or any actionable claim in respect of any such property held by an assessee, whether or not connected with his business, profession or vocation, but does not include any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation ;”

(b) for the *Explanation* to clause (6A) the following shall be substituted, namely :—

“Provided further that the expression “accumulated profits”, wherever it occurs in this clause, shall not include capital gains of any previous year prior to the previous year for the assessment for the year ending on the 31st day of March 1948 ;”

(c) in clause (6C), after the word and figures “section 10” the words, figures and letter “and any capital gain chargeable according to the provisions of section 12B” shall be inserted ;

(d) in clause (15), for the words “does not apply ; and” the words “does not apply and except any capital gain which is not includible in the total income of an assessee ;” shall be substituted.

Amendment
of section 4,
Act XI of
1922.

3. In sub-section (3) of section 4 of the said Act,—

(a) to clause (iv) the words “and any capital gains of the Fund arising from the sale, exchange or transfer of such securities” shall be added ;

(b) in clause (vii), after the words “Any receipts” the words, figures and letter “not being capital gains chargeable according to the provisions of section 12B and” shall be inserted.

Amendment
of section
4A, Act XI
of 1922.

4. To clause (c) of section 4A of the said Act, the words “account not being taken in either case of income chargeable under the head “Capital gains”” shall be added.

Amendment
of section 6,
Act XI of
1922.

5. To section 6 of the said Act the following clause shall be added, namely :—

“(vi) Capital gains”.

6. After section 12A of the said Act the following section shall be inserted, namely :—

Insertion of
new section
12B in Act
XI of 1922.

‘12B. (1) The tax shall be payable by an assessee under the head “Capital gains” in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset ; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place :

Provided that where the amount of capital gains in the previous year does not exceed five thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income :

Provided further that any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely :—

- (i) expenditure incurred solely in connection with such sale, exchange or transfer ;
- (ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10 and 12 :

Provided that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section :

Provided further that where the capital asset became the property of the assessee before the 1st day of January 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10 :

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the second proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

Amendment of section 14, Act XI of 1922. 7. In clause (c) of sub-section (2) of section 14 of the said Act, after the words "are assessable under" the words, figures and letter "section 12B or" shall be inserted.

Amendment of section 17, Act XI of 1922. 8. To section 17 of the said Act the following sub-section shall be added, namely:—

"(6) Where the total income of an assessee, not being a company, includes any capital gain from the sale, exchange or transfer of a capital asset which has been possessed by the assessee for more than two years, the tax, including super-tax, payable by him on his total income shall not exceed the tax, including super-tax, payable on his total income as reduced by the amount of such capital gain *plus* income-tax at the maximum rate on such amount."

Amendment of section 18A, Act XI of 1922. 9. To section 18A of the said Act the following sub-section shall be added, namely:—

'(12) Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of this section.'

Amendment of section 24, Act XI of 1922. 10. In section 24 of the said Act, after sub-section (2) the following sub-sections shall be inserted, namely:—

'(2A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head "Capital gains", such loss shall not be set off except against any profits and gains falling under that head.

(2B) Where an assessee sustains a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed five thousand rupees, it shall not be carried forward.'

11. To section 38 of the said Act the following clause shall be added, namely :—

Amendment
of section 38,
Act XI of
1922.

"(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

12. In section 42 of the said Act,—

Amendment
of section 42,
Act XI of
1922.

(a) for the marginal heading the following shall be substituted, namely :—

"Income deemed to accrue or arise within British India";

(b) in sub-section (1), after the words "in cash or in kind," the words "or through or from the sale, exchange or transfer of a capital asset in British India," shall be inserted.

13. To section 43 of the said Act the following *Explanation* shall be added, namely :—

Amendment
of section 43,
Act XI of
1922.

"*Explanation*—A person, whether residing in or out of British India, who acquires, whether by sale, exchange or transfer, a capital asset in British India from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India."

14. In clause (d) of sub-section (1) of section 58C of the said Act, after the words "securities purchased therewith," the words "and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund," shall be inserted.

Amendment
of section
58C, Act XI
of 1922.

15. In section 58R of the said Act, after the words "deposits of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange or transfer of capital assets of such fund" shall be inserted.

Amendment
of section
58R, Act XI
of 1922.

CHAPTER III

Amendments of Act XV of 1940.

16. In section 15 of the Excess Profits Tax Act, (hereafter in this Chapter referred to as the said Act), the words "within five years of the end of the chargeable accounting period in question" shall be omitted.

Amendment
of section 15,
Act XV of
1940.

Insertion of
new section
26A in Act
XV of 1940.

17. After section 26 of the said Act the following section shall be inserted, namely :—

“26A. (1) If on an application made to it through the Ex-cess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

(i) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 in connection with that business,—

- (a) expenditure on the removal of works constructed for protection against enemy attack ;
- (b) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof ;
- (c) where any physical assets held for the purposes of the business were altered to adapt them to war conditions, expenditure on re-adapting them to normal requirements ;
- (d) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war ; or

(ii) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, a loss on the sale of trading stock held on the 31st day of March 1946 for the purposes of the business ; or

(iii) incurred in any accounting period ending on or before the 31st day of March 1946 in connection with that business any expenditure referred to in the sub-clauses of clause (i) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period :—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require :

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate :

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in sub-clauses (a), (b) and (c) of clause (i) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable :

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (b) and (c) of clause (i) as the persons previously carrying on the business would have had if there had been no such change.

(2) Where an accounting period included, but did not end on, the 31st day of March 1946, all expenditure referred to in the sub-clauses of clause (i) of sub-section (1) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (1) as if it were incurred after that day, and if an application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (1).

(3) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change."

18. To the first paragraph of rule 11 of Schedule I to the said Act the following proviso shall be added, namely :—

Amendment
of Schedule
I, Act- XV
of 1940.

" Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period ; and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require."

STATEMENT OF OBJECTS AND REASONS

The main object of this Bill is to include in the Indian Income Tax Act, 1922 provisions enabling income-tax to be levied on a profit or gain arising from the sale, exchange or transfer of a capital asset. For this purpose several amendments to the Income-tax Act are necessary. In addition the Bill seeks to amend the Excess Profits Tax Act mainly by making provision for terminal losses occurring after the excess profits tax has ceased but which are properly attributable to the excess profits tax period. The main provisions of the Bill are explained in the Notes on Clauses below.

NEW DELHI ;

LIAQUAT ALI KHAN

The 27th February, 1947.

NOTES ON CLAUSES

CHAPTER II

Clause 2.—Sub-clause (a) defines “ capital asset ” as meaning any property (other than agricultural land) or any actionable claim in respect of such property held by an assessee, but it does not include such items as stock-in-trade which would properly be taken into account in determining his profits and gains chargeable under section 10 of the Act.

Sub-clause (b).—The effect of this amendment is to make accumulated capital profits now exempt taxable but not if they are capital gains of any previous year prior to the previous year for the assessment year 1947-48.

Sub-clause (c) enlarges the definition of ‘ income ’ so as to include capital gains chargeable under the new section 12B.

Sub-clause (d) secures that in the case of a non-resident ‘ capital ’ gains arising outside British India are not included in his total world income.

Clauses 3 (a), 14 and 15—make only consequential changes to exempt capital gains in the case of Provident and Superannuation Funds which may consist *inter alia* of such gains.

Clause 3 (b)—is intended to withdraw exemption from tax in the case of a capital gain falling under section 12B even though it may be of a casual or non-recurring nature.

Clause 4—amends section 4A(c) so as to exclude capital gains for the purposes of determining the residence of a company on the basis of more than half the income arising in British India.

Clause 5—adds to section 6 another head of income, namely, “ Capital gains ”.

Clause 6—adds a new section 12B to the Act. Under sub-clause (1) capital gains are deemed to be income and income of the previous year in which the sale, exchange or transfer takes place. According to the first proviso if the amount of capital gains in the previous year does not exceed five thousand rupees, it will be ignored and not included in the assessee's total income. This will exclude assessment of small gains made in the disposal of personal effects or otherwise. The second proviso lays down that any distribution of assets on the partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons or on the liquidation of a company or under a deed of gift, bequest, will or transfer on trust is not treated as sale, exchange or transfer.

Sub-clause (2) provides the method of computing the amount of a capital gain. From the full value of the consideration is to be deducted any expenditure incurred in the sale, exchange or transfer of the capital asset and its actual cost to the assessee including any capital expenditure incurred by him in making additions or alterations thereto. The cost is, however, to be reduced by any option or other money received in connection with any previous negotiation for sale, exchange or transfer. Where the capital asset is one in respect of which the assessee has obtained depreciation allowance, the cost is to be reduced to the written-down value of the asset subject to an increase or decrease to be made by the amount assessed or an allowance made under section 10(2) (vii) of the Act.

In the case of assets acquired prior to the 1st January 1939, as it is not sought to assess any appreciation occurring prior to that date, the assessee has been given the option to substitute for the cost the fair market value of the asset on that date.

Clause 7—amends section 14(2) (c) so as to provide that the exemption conferred therein on profits arising in an Indian State does not apply to capital gains.

Clause 8—adds another sub-section to section 17 of the Act to secure that in the case of assets held by the assessee for more than two years, the tax payable on capital gains arising therefrom will not exceed the income-tax on such capital gains at the maximum rate.

Clause 9—amends section 18-A. "Capital gains" will not be taken into account for any of the purposes of this section.

Clause 10—A loss sustained in the sale, exchange or transfer of a capital asset in any year will be set off against a capital gain made in that year. As in the case of profits, a loss which does not exceed five thousand rupees will be ignored.

Carry forward of such losses will be allowed for six years, but a set off will be permissible only against capital gains.

Clause 11—amends section 38 to enable the Income-tax Officer to require any dealer, broker, agent or any person concerned in the management of a commodity Exchange to furnish particulars of any payments or receipts connected with the sale, exchange or transfer of a capital asset.

Clause 12—amends section 42 so that gains arising from the sale, exchange or transfer of a capital asset in British India will be deemed to be income accruing or arising in British India.

Clause 13—amends section 43 so that a person to whom a non-resident sells his assets in British India can be treated as his agent. If he is treated as agent, he will be liable to pay the tax on the capital gains made by the non-resident principal and the tax can be recovered from the agent's assets in British India including the assets sold or transferred to him by the non-resident principal.

CHAPTER III

Clause 16—It is well known that during the period of the war many persons, not previously carrying on business or carrying on business on only a small scale, have made very considerable profits. The responsibilities laid upon Income-tax Officers who have to function also as Excess Profits Tax Officers have been so heavy that it has been practically impossible for them to discover every such case. The clause seeks to extend the period during which action may be taken by Excess Profits Tax Officers to secure for the Revenue its just dues in such cases.

Clause 17.—This clause seeks to implement the promise given to provide for allowance, against the profits of the final E.P.T. chargeable accounting period, of losses and expenditure arising in the period of transition from war-time to peace-time conditions.

Clause 18.—Rule 11 of the First Schedule to the Act may be interpreted as giving the power to relate back to Excess Profits Tax chargeable accounting periods expenditure incurred after the termination of the tax. This clause seeks to limit the period the expenditure during which may be so related back.

The following Bill* was introduced in the Legislative Assembly on the 28th February, 1947

L. A. BILL No. 29 OF 1947

A Bill to impose a special tax on a certain class of income

WHEREAS it is expedient to impose a special tax on income arising from business ;

It is hereby enacted as follows :—

Short title, extent
and
commencement.

1. (1) This Act may be called the Business Profits Tax Act, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “accounting period” in relation to any business means any period which is or has been determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922 ;

X1 of 1922

(2) “business” includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation the profits of which are chargeable according to the provisions of section 10 of the Indian Income-tax Act, 1922.

* The Governor General has been pleased to accord the sanction required under the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society ;

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act ;

(3) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1947 ;

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

(4) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(5) "control of a company" means control direct or indirect of more than one-half of the voting power attached to the total issued paid-up share capital of the company, or control vested by its Memorandum and Articles of Association otherwise than by reference to such voting power ;

Provided that the voting power attached to shares held by a nominee or trustee for any person shall be deemed for the purpose of this definition to be held by that person ;

(6) "deficiency of profits" means —

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of a sum bearing to the sum of one lakh of rupees the same proportion as the chargeable accounting period bears to a period of one year ;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to an amount bearing to the sum of one lakh of rupees the same proportion as the chargeable accounting period bears to a period of one year ;

(7) "director" includes any person occupying the position of a director by whatever name called and also includes any person who —

(i) is a manager of the company or concerned in the management of the business and

(ii) is remunerated out of the funds of the business, and

(iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company ;

(8) "dividend" has the same meaning as in section 2 of the Indian Income-tax Act, 1922 ;

(9) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;

(10) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(11) "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company ;

(12) "person" includes a Hindu undivided family ;

(13) "prescribed" means prescribed by rules made under this Act ;

(14) "profits" means profits as determined in accordance with the Schedule ;

(15) "taxable profits" means the amount by which the profits during a chargeable accounting period exceed the sum which bears to the sum of one lakh of rupees the same proportion as the chargeable accounting period bears to a period of one year.

Tax Authorities.

3. (1) Every Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer shall have the like powers under this Act and in relation to the same area and cases as he exercises under the Indian Income-tax Act, 1922.

XI of 1922

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner of Income-tax in the exercise of his appellate functions.

Charge of tax.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as "business profits tax") which shall be equal to twenty-five per cent. of the taxable profits :

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from business profits tax under this Act.

XI of 1922.

5. This Act shall apply to every business of which any part the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) XI of 1922 of that sub-section :

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India, unless the business is controlled in India :

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within an Indian State unless such income, profits or gains are received or deemed under the provisions of the aforesaid Act to be received in or are brought into British India in any chargeable accounting period, or are assessable under section 42 of that Act.

6. Where a deficiency of profits occurs in any chargeable accounting period in any business, the taxable profits of the business shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

Relief on occurrence of deficiency of profits.

- (a) the aggregate amount of the taxable profits for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of business profits tax payable in respect thereof shall be deemed to be reduced accordingly, and the relief necessary to give effect to the reduction shall be given by repayment or otherwise ;
- (b) where the amount of the deficiency of profits exceeds the aggregate amount of the taxable profits for the previous chargeable accounting periods or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any taxable profits for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any taxable profits for the next subsequent chargeable accounting period and so on.

7. As from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of this Act to have been discontinued and a new business to have been commenced.

Change in person carrying on business.

8. (1) Where any interest, annuity, or other annual payment, or any royalty or rent, is payable by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, and the recipient company is resident outside British India, no allowance shall be made in respect of such payment in computing the profits or losses of the paying company.

Interconnected companies.

(2) Where—

(a) a company (hereinafter referred to as "the principal") is resident in British India and is not a subsidiary of any other company resident in British India; and

(b) during the whole or any part of any chargeable accounting period of the principal, another company resident or carrying on business within British India (hereinafter referred to as "the subsidiary") is a subsidiary of the principal

the profits or losses of the subsidiary for such chargeable accounting period or part thereof shall be treated for the purposes of this Act as if they were profits or losses arising from the business of the principal

Provided that the profits of the subsidiary so treated shall not be exempted from business profits tax in the hands of the principal by reason of any exemption applicable to the principal under the proviso to section 4.

(3) Where the chargeable accounting periods of the principal and subsidiary are not co-terminous, such division and apportionment of the profits or losses of the subsidiary for any chargeable accounting period shall be made as will allocate the due proportion thereof to the relative chargeable accounting period or periods of the principal, and such division and apportionment shall be by reference to the proportion that the number of days of the chargeable accounting period of the subsidiary falling within the relative chargeable accounting period or periods of the principal bears to the total number of days in the chargeable accounting period of the subsidiary

(4) For the purposes of this section a company shall be deemed to be a subsidiary of another company if and so long as not less than four-fifths of its ordinary share capital is beneficially owned by that other company, whether directly or through another company or other companies or partly directly and partly through another company or other companies.

(5) The business profits tax payable by virtue of this section by the principal shall, for the purposes of section 10, be allocated by the Income-tax Officer to the respective companies concerned in such proportion as in his opinion is just.

9. Where an individual is entitled to profits arising from more than one business, of which at least one is carried on by a firm in which he is a partner, the Income-tax Officer may, with the prior sanction of the Inspecting Assistant Commissioner of Income-tax, aggregate the shares of such individual in the profits or losses of all of such businesses and treat the sum of such aggregation as the profits of a business carried on by such individual and assess him accordingly

Aggregation of profits in certain cases.

Provided that if the accounting periods of such businesses are not co-terminous, the Income-tax Officer shall determine in respect of such individual his chargeable accounting period and shall make such divisions, apportionments and aggregation of the shares of such individual in the profits or losses of the several businesses as may be necessary to determine for such chargeable accounting period the total profits and gains of such individual therefrom :

Provided further that for the purposes of this section, a company, which is neither one in which the public are substantially interested, as defined in the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, nor a subsidiary company as defined in sub-section (4) of section 8 of this Act, shall be deemed to be a firm in which the persons having an interest in the company are partners. or, in the case of a sole-shareholder, a business carried on by that sole-shareholder, and the profits of such company shall be computed accordingly XI of 1922

Provided further that any profits or losses so aggregated for assessment upon an individual shall be excluded from the profits or losses of the respective businesses for the purposes of this Act ; and no assessment under this Act shall be made in respect of any such business save in the name of the other partners therein

10. The amount of the business profits tax payable by any person for any chargeable accounting period shall, in computing total income for the purposes of the relevant income-tax or super-tax assessment, be allowed as a deduction : Allowance of business profits tax in computing income for income-tax purposes

Provided that where, under the provisions of this Act relating to deficiencies of profits relief is given by way of repayment from business profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) in which the deficiency of profits occurs. XI of 1922

11. (1) The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period not being less than thirty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as Issue of notice for assessment.

may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business or the amount of deficiency, if any, available for relief under section 6 :

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Income-tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require.

Assessments.

12. (1) The Income-tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 11, assess to the best of his judgment the profits liable to business profits tax and the amount of business profits tax payable on the basis of such assessment or if there is a deficiency of profits, the amount of that deficiency and the amount of business profits tax, if any repayable, and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Business profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on, or treated as carrying on, the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

Power to make provisional assessment.

13. (1) The Income-tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 12, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 11 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the taxable profits and the amount of business profits tax payable thereon.

(2) Before making such provisional assessment the Income-tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount

of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Income-tax Officer shall make allowance for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 6 to be set off against the taxable profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that, where such deficiencies of profits have not been determined under sub-section (1) of section 12, the Income-tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 12, determine the amount of business profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 11, and may proceed to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Profits escaping assessment.

Penalties.

15 If the Income-tax Officer, the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 11, or to produce or cause to be produced the accounts or documents or other evidence required by the Income-tax Officer under sub-section (2) of that section, or has concealed particulars of the profits of the business, or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty, in addition to the amount of any business profits tax payable, a sum not exceeding—

- (a) where the person has failed to furnish the return required under sub-section (1) of section 11, the amount of the business profits tax payable ;
- (b) in any other case, the amount of business profits tax which would have been avoided if the return made had been accepted as correct .

Provided that the Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Income-tax.

**Appeals to
Appellate Assistant
Commissioner of
Income-tax.**

16. (1) Any person objecting to the amount of business profits tax for which he is liable as assessed by the Income-tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Income-tax Officer, or to the amount of any deficiency of profits as assessed by the Income-tax Officer, or to the amount allowed by the Income-tax Officer by way of relief under any provision of this Act or to any refusal by the Income-tax Officer to grant relief, may appeal to the Appellate Assistant Commissioner of Income-tax.

(2) An appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within thirty days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within thirty days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner of Income-tax may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner of Income-tax shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made by the Central Board of Revenue in relation to income-tax.

17. Any Income-tax Officer or any person in respect of whose business an order under section 12 has been passed and who objects to an order passed by an Appellate Assistant Commissioner of Income-tax under section 15 or section 16 may, within the prescribed time and in the prescribed manner appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the said Act **Appeal to Appellate Tribunal.** **XI of 1922**

18. The Commissioner of Income-tax may at any time within four years from the date of any order passed by any Appellate Assistant Commissioner of Income-tax or Income-tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies **Rectification of mistakes.**

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

19. The sections of the Indian Income-tax Act 1922, as applied to excess profits tax by virtue of section 21 of the Excess Profits Tax Act, 1940, shall, in so far as they are not repugnant to the provisions of this Act, apply to business profits tax as they apply to excess profits tax **Application of provisions of Act XI of 1922. XV of 1940**

20. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act **Income-tax papers to be available for the purposes of this Act. XI of 1922**

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922

21. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 11, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues. **Failure to deliver returns or statements.**

False statements.

22. If a person makes in any return required under section 11 any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Institution of
proceedings and
composition of
offences.**

23. (1) A person shall not be proceeded against for an offence under section 21 or section 22 except at the instance of the Inspecting Assistant Commissioner of Income-tax.

XIV of 1930

(2) No prosecution for an offence punishable under section 21 or section 22 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner of Income-tax may, either before or after the institution of proceedings, compound any offence punishable under section 21 or section 22.

**Power to make
rules.**

24. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

(b) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

XI of 1922.

THE SCHEDULE

[See SECTION 2 (14).]

Rules for the computation of profits for purposes of Business Profits Tax.

1. The profits of a business during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule, be computed in accordance with the provisions of section 10 of the Indian Income-tax Act, 1922 :

XI of 1922.

Provided that any sums other than any interest paid by a firm to a partner of the firm excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of business profits tax :

Provided further—

- (a) that any sums received or credited in a chargeable accounting period which by virtue of rule 9 of Schedule I to the Excess Profits Tax Act, 1940, XV of 1940, have been treated as business receipts for the purpose of assessment to excess profits tax ; and
- (b) any expenditure or loss incurred in any chargeable accounting period, allowance in respect of which has been made for excess profits tax purposes,—

shall be disregarded in computing the profits or losses of the chargeable accounting period :

Provided further that where a chargeable accounting period is not an accounting period, the profits or losses of the business during the accounting periods wholly or partly included within the chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profit during the chargeable accounting period ; and any such apportionment shall be made in proportion to the number of days in the respective periods.

2. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of business profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

XI of 1922

3. Income received from investments or other property shall be included in the profits only as provided in this rule, that is to say,—

- (a) in the case of the business of a building society, or a banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property ; or
- (b) in the case of a business part of which consists in banking, insurance or dealing in investments or other property, not being a business to which clause (a) applies, the profits shall include all income received from investments or other property held for the purposes of that part of that business :

Provided that—

- (i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on business as defined in this Act, and

(ii) income to which the persons carrying on the business are not beneficially entitled,—

shall in no case be included.

4. (1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company, the directors whereof have throughout that accounting period a controlling interest therein, no deduction shall be made in respect of directors' remuneration in computing the profits for that accounting period.

(2) Where, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company have during any part of that accounting period a controlling interest therein, and the case is not one to which sub-rule (1) applies, the profits of the accounting period shall be computed as if the directors of the company had no controlling interest therein, and to the part thereof appropriate to the chargeable accounting period ascertained in accordance with the third proviso to rule 1 shall be added the directors' remuneration for that part of the chargeable accounting period during which the directors of the company had a controlling interest therein.

(3) In this rule the expression "directors' remuneration" does not include—

- (a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than five per cent. of the ordinary share capital of the company, or
- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of the business profits tax.

5. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Income-tax Officer considers reasonable and necessary, having regard to the requirements of the business, and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Income-tax Officer unless he has obtained the prior authority of the Inspecting Assistant Commissioner of Income-tax.

(2) Any person who is dissatisfied with the decision of the Income-tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal referred to in section 17.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to impose a special income-tax on the profits exceeding one lakh of rupees of businesses, professions and vocations. The main provisions of the Bill are explained in the notes on clauses below.

NEW DELHI,

LIAQUAT ALI KHAN

The 27th February 1947.

NOTES ON CLAUSES

Clause 2 (Definitions).—In general follows the Excess Profits Tax Act, 1940, but :—

Sub-clause 2 seeks to bring within the charge any profession or vocation the profits of which are assessable under section 10 of the Income-tax Act. The provision would exclude, for example, a professional man working for a salary.

Sub-clause 5 seeks to make control depend, *inter alia*, on the voting power exercised by persons to the extent of their beneficial interest.

Sub-clause 15 defines “taxable profits” as the excess of profits over one lakh of rupees a year.

Clause 3.—Seeks to give jurisdiction to the same authorities as have jurisdiction under the Indian Income-tax Act, 1922.

Clause 4.—Seeks to provide that the charge shall be 25 per cent. of the taxable profits and continues the exemptions to agricultural income, life insurance business etc., which were granted by the Excess Profits Tax Act.

Clause 5.—Follows the corresponding section of the Excess Profits Tax Act, but profits arising in an Indian State are not exempted if they are received in or brought into British India or are assessable under section 42 of the Income-tax Act. Profits arising in an Indian State are thus to be treated in the same way as under section 14 (2) (c) of the Income-tax Act.

Clause 6.—Follows the corresponding Excess Profits Tax provision in regard to set-off of deficiencies.

Clause 7.—Seeks to ensure that any person is chargeable in respect only of the profits arising during his proprietorship and to avoid the set-off of a deficiency of profits made by one person against the taxable profits of another.

Clause 8.—Generally follows the corresponding Excess Profits Tax provision in regard to principal and subsidiary companies, and seeks to secure—

- (a) payment of the tax on the whole of the profits attributable to British India, notwithstanding that part thereof may be payable in some form to a related foreign company; and
- (b) aggregation of the profits and losses of principal and subsidiary companies resident in British India.

Clause 9.—Recognises the extent to which individuals, earning more than one lakh of rupees from business, carry on their business activities through a number of different partnerships or private companies, and seeks to counteract the possible loss of revenue from this cause by giving powers of aggregation in such cases

Clause 10.—Seeks to make the proposed tax allowable in computing total income for income-tax purposes; and where such tax paid subsequently becomes repayable by reason of set-off of a deficiency to treat the repayment as income of the year to which the deficiency related.

Clauses 11 to 24 (both inclusive).—Seek to make applicable the same machinery of assessment, appeal, etc., as applies to Excess Profits Tax.

Schedule.—(Rules for Computation of Profits). Generally seeks to apply the corresponding rules of Schedule I of the Excess Profits Tax Act, but—

(a) Rule 1, 2nd proviso seeks—

(i) to avoid assessment to both Excess Profits Tax and Business Profits Tax of receipts from long-term contracts, and

(ii) similarly to avoid allowance in respect of any expenditure or loss which has been allowed for the purposes of Excess Profits Tax ;

(b) Rule 3 seeks to ensure that investment income shall only be included where it really forms a part of the trading receipts of the business; and that a dividend or distribution of profit from a body corporate which is within the scope of this Bill is not again assessable in the hands of the recipient.

The following Bill was introduced in the Legislative Assembly on the 28th February, 1947.

L. A. BILL No. 80 OF 1947

A Bill to provide for an investigation into matters relating to taxation on income.

WHEREAS it is expedient, for the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law, and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof, to make provision for an investigation to be made into such matters ;

It is hereby enacted as follows :—

Short title,
extent and
commencement

1. (1) This Act may be called the Taxation on Income (Investigation Commission) Act, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation.
XI of 1922.
XV of 1940.

2. In this Act, "taxation on income" means any tax chargeable under the Indian Income-tax Act, 1922, or the Excess Profits Tax Act, 1940.

Constitution
and functions of
Commission.

3. (1) The Central Government may constitute a Commission to be called the Income-tax Investigation Commission (hereinafter referred to as the Commission) whose duty it shall be to investigate and report to the Central Government on all matters relating to taxation on income, with particular

reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation is adequate to prevent the evasion thereof.

(2) In particular and without prejudice to the generality of the foregoing sub-section, the Commission may in respect of any person, and shall in respect of any person specified to it in this behalf by the Central Government, investigate the present and past financial affairs of such person in order to determine whether or not he has paid the full amount properly due from him by way of taxation on income, and shall in all such cases make a separate report thereon to the Central Government.

(3) In making an investigation under sub-section (2) into the financial affairs of any person, the Commission shall have power to investigate also the present and past financial affairs of any other person who is believed by the Commission to be or to have been connected directly or indirectly with the first-mentioned person as agent or nominee or in any other capacity whatsoever; and if any question arises as to whether any person is or has been so connected with the first-mentioned person, the decision of the Commission thereon shall be final.

4. (1) The Commission shall consist of a Chairman (being a person who is, or has been, or possesses the qualifications for appointment as, a Judge of a High Court) and two other Commissioners, appointed by the Central Government. Composition of Commission.

(2) On the occurrence from any cause of a vacancy among the Commissioners, the Central Government may, if it thinks fit, appoint a person to fill the vacancy.

5. The Commission shall have power to administer oaths, and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of taking evidence on oath, enforcing the attendance of witnesses and of persons whose financial affairs it may be investigating, compelling the production of documents and issuing commissions for the examination of witnesses, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898; and any reference in the said Chapter to the presiding officer of a Court shall be deemed to include a reference to the Chairman of the Commission. Commission to have powers of Civil Court. V of 1908.

6. The Commission may authorise, subject to such limitations or restrictions, if any, as it thinks fit to impose, any person appointed by it for the purpose to perform or discharge on its behalf any duty of the Commission and to exercise in the name and on behalf of the Commission when so acting any of the powers of the Commission, including the powers conferred on it by section 5. Power to appoint investigating officers.

**Procedure of
Commission.**

7. (1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of its sittings, deciding whether to sit in public or in private and deciding to what extent, if any, and subject to what conditions, persons whose financial affairs it is investigating may be represented by pleader), and may act notwithstanding a vacancy in the number of the Commissioners.

1 of 1872.

(2) The Commission or any person authorised by it under section 6 shall not, in any proceedings before it or him, be bound by the provisions of the Indian Evidence Act, 1872, and no document shall be inadmissible in evidence in any such proceedings on the ground that it is not duly stamped or registered.

(3) In any proceedings before the Commission or any person authorised by it under section 6, no person shall, the provisions of any other law to the contrary notwithstanding, be excused from answering any question on the ground that his answer to such question will incriminate him or may tend directly or indirectly to incriminate him or tend directly or indirectly to expose him to any liability for damages or to a penalty or forfeiture of any kind :

Provided that a person who in the opinion of the Commission has duly answered all questions which he has been required by it or a person authorised as aforesaid, as the case may be, shall be entitled to be granted by the Commission a certificate of indemnity, and such certificate may be pleaded by such person in any civil or criminal Court, and the answers given in any such proceeding as aforesaid by a person to whom such a certificate has been granted shall not be admissible in evidence against him in any suit, prosecution or other proceeding before such Court :

Provided further that the Commission may, if it considers it expedient in the public interest so to do, decline to grant any such certificate to a person whose financial affairs are being investigated in the proceeding.

XI of 1922.

XLV of 1940.

(4) Nothing in section 54 of the Indian Income-tax Act, 1922, or in that section as applied to excess profits tax by section 21 of the Excess Profits Tax Act, 1940, shall apply to the disclosure of any of the particulars referred to therein in any proceeding before the Commission or any person authorised by it under section 6.

XLV of 1860.

**Power to direct
reopening of
assessment
proceedings.**

(5) The Commission and all persons authorised by it under section 6 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

8. (1) After considering any report made to it under sub-section (2) of section 3, the Central Government may, by order in writing, direct that proceedings to assess in respect of any period the person to whose financial affairs the report relates to income-tax, super-tax, or excess profits tax shall

be taken or reopened ; and upon such a direction being made, such assessment proceedings may be taken under the appropriate law, notwithstanding anything to the contrary contained in section 34 of the Indian Income-tax Act, 1922, or XI of 1922. section 15 of the Excess Profits Tax Act, 1940, or any other XV of 1940. law, and notwithstanding any lapse of time.

(2) Notwithstanding anything to the contrary contained in any other law, in any proceedings directed to be taken under sub-section (1) any evidence in the case adduced before the Commission or a person authorised by it under section 6 shall be admissible in evidence.

9. No act or proceeding of the Commission or any person authorised by it under section 6 shall be called in question in any manner by any Court, and no suit, prosecution or other legal proceeding shall lie against the Crown or any Commissioner or any other person for anything done or in good faith intended to be done under this Act. Bar of Jurisdiction.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make Rules.

STATEMENT OF OBJECTS AND REASONS

It is notorious that recently businesses and properties have changed hands for very large sums of money. Government are anxious to know how in spite of very high rates of taxation—income-tax, super-tax and Excess Profits-Tax—the large fortunes which these transactions imply have been accumulated. The Bill therefore proposes to appoint and empower a special Commission to investigate both the actual incidence of taxation with particular reference to individual cases and the extent to which the existing law is adequate to prevent evasion. The main provisions of the Bill are explained in the notes on clauses below.

LIAQUAT ALI KHAN.

NEW DELHI,

The 27th February 1947.

NOTES ON CLAUSES

Clause 3.—The contemplated functions of the Commission are two-fold, to make a general report on the effectiveness or otherwise of the existing law and procedure to prevent tax evasion, and to make special investigations into particular cases. In these cases it is necessary for the success of the investigation that the Commission should have power to investigate the financial affairs of other connected persons.

Clause 5.—This is a normal provision when *ad hoc* tribunals such as this, Commission are set up. It rests the Commission with powers of a Civil Court to compel the production of evidence, both oral and documentary, before it, and gives it the same powers as a Court possesses in regard to offences committed before it.

Clause 6.—It will not be possible for the Commission itself to make all the detailed investigation that will be required, and this clause enables the Commission to appoint expert accountants or assessment officers to aid the Commission in its task. Such persons must be vested with like powers to compel the production of evidence before them.

Clause 7.—Sub-clause (1) gives the Commission general power to regulate its own procedure, and the final sub-clause is a normal provision, giving the Commission and its investigating staff the status of public servants. Contempts of their authority are thus brought within the mischief of Chapter X of the Indian Penal Code. The intervening sub-clauses in effect relax the ordinary law of evidence in proceedings before the Commission and investigating officers : these special provisions are regarded as essential to the success of the Commission's investigations. A witness who duly answers questions put to him will be entitled to a certificate of indemnity protecting him from liability in civil or criminal courts in respect of statements made by him in proceedings under this Bill, though an exception may be made against a person whose affairs are being investigated if the Commission holds the opinion that it would be against the public interest to grant such an indemnity.

Clause 8.—Should it be found in any case that there has been evasion of tax, Government is given power by this clause to order reassessment, proceedings for which may be taken up notwithstanding any bar against the reopening of assessment proceedings in the relevant law. And any facts elicited by the Commission may be used in proceedings under this clause.

Clause 9.—This is the usual indemnity provision.

M. N. KAUL,
Secy. to the Govt. of India.